Proposed Amendments to
Chapter 305 Permit by Rule Standards
September 2004

Specific amendments, by section, are highlighted below:

Amend Section 1(D), "Introduction", as follows:

D. Discretionary authority. Notwithstanding compliance with the PBR applicability requirements and standards set forth in this chapter, the DEP may require an individual permit application to be filed in any case where credible evidence indicates that the activity:

(1) May violate the standards of this rule or the NRPA (38 M.R.S.A. Section 480-D);

(2) Could lead to significant environmental impacts, including cumulative impacts; or

(3) Could adversely impact a resource of special concern.

Amend Section 2(B)(3), "Activities adjacent to protected natural resources", as follows:

(3) A brief narrative explaining why there is no practicable alternative to location of the activity within the 75 foot setback, and how the impact on the remaining buffer and the resource will be minimized. This narrative is not required for those activities presumed to have no practicable alternative as listed in paragraph C(1) of this section.

Amend Section 2(C)(1)(c), "Activities adjacent to protected natural resources", as follows:

(c) The replacement of a structure or the placement or replacement of a foundation or supports for a legally existing structure or addition that is not closer to a protected natural resource than the existing structure provided the municipality has approved the location of the replaced or modified structure. However, any fill, other than that required to maintain the integrity of the structure such as foundation backfill, must meet the 75 foot setback standard unless otherwise approved by the DEP pursuant to this section.

NOTE: In most cases when a structure is being replaced or a foundation is being put under an existing structure that does not meet the setback requirements of the Municipal Shoreland Zoning Ordinance, the applicant is required by the municipality to move the structure back from the natural resource to the maximum extent practicable.

Amend Section 2(D), "Activities adjacent to protected natural resources", as follows:

NOTE~~S~~:

~~(1)~~ Section 480-Q(15-A) of the NRPA exempts the installation, removal or repair of a septic system from permitting requirements as of March 1, 1995, as long as the system complies with all requirements of the subsurface wastewater disposal rules adopted by the Department of Human Services pursuant to 22 M.R.S.A. Section 42(3).

~~(2) The placement of wastewater treatment facilities or disposal systems by people in possession of an overboard discharge license or conditional discharge permit is exempt from the NRPA, subject to certain conditions (see Chapter 596 of DEP Regulations "Overboard Discharges: Licensing, Relicensing, Transfer and Abandonment of Licenses").~~

Amend Section 3(A) NOTES, "Intake pipes and water monitoring devices", as follows:

(3) A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving open trench excavation in a waterbody or wetland;

(b) Any activity in coastal waterways; ~~or~~

(c) Any activity within a river, stream or brook that takes place between October 2 and July 14~~.~~; or

(d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 3(C)(9), "Intake pipes and water monitoring devices", as follows:

(9) Maintenance clearing of deposited debris and sediments from the intake area is allowed provided the cleared materials are removed from the resource and are disposed of in an upland location at least ~~25~~ 75 feet from any open water body and stabilized to prevent erosion unless a closer upland disposal area is approved under Section 2 of this rule. Disposal of any dredged material or debris must be carried out in conformance with Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Sections 1301 *et seq.* Clearing or removal of sediment from a water body for other purposes is not allowed under this section.

Amend Section 4(C)(1), "Replacement of structures", as follows:

(1) A replaced structure that is located in, on, or over a protected natural resource may not exceed the dimensions, including height, of the previously existing structure, and may not extend any further into the water body or wetland, except that retaining walls may be reinforced with a facing material not exceeding 6 inch in width or may be replaced with riprap in accordance with Section 8 "Shoreline stabilization".

Amend Section 4(D)(8), "Replacement of structures", as follows:

(8) Riprap**.** Heavy, irregular-shaped rocks that are fit into place, ~~usually~~ without mortar, on a slope.

Amend Section 6(A)(1), "Movement of rocks or vegetation", as follows:

(1) This section applies to the limited movement of rocks or hand removal of vegetation from below the normal high water line of a great pond or river, stream or brook in order to provide access for swimming or navigation.

Amend Section 6(C)(4), "Movement of rocks or vegetation", as follows:

(4) Wheeled or tracked equipment may not be operated in the water. For large rock movement, equipment operating on the shore may reach into the water with a bucket or similar extension provided no bottom sediments are removed or displaced. ~~Any soil disturbance on the land must be stabilized with seed or mulch.~~Areas that are disturbed as part of equipment access and operation must be restored to their original grade and vegetation or as near thereto as practicable.

Amend Section 6(C)(5), "Movement of rocks or vegetation", as follows:

(5) Rocks that are holding the shoreline may not be moved ~~if that action would result in destabilization of the shoreline or soil erosion~~.

Amend Section 7(A)NOTES, "Outfall pipes", as follows:

(2) A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving open trench excavation in a waterbody or wetland;

(b) Any activity in coastal waterways; ~~or~~

(c) Any activity within a river, stream or brook that takes place between October 2 and July 14~~.~~; or

(d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 7(D)(5), "Outfall pipes", as follows:

(5) Non-native wetland plants. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, for example, common reed (*Phragmites c~~C~~ommunis*) and purple loosestrife (*Lythrum salicaria*).

Amend Section 8(A), "Shoreline stabilization", as follows:

A. Applicability

(1) This section applies to the establishment of vegetation and the installation of riprap along the shoreline of a coastal wetland, great pond, freshwater wetland with over 20,000 square feet of open water~~, river~~, stream or brook. This rule limits riprap in coastal wetland areas to that required to protect a structure within 100 feet of an eroding bank or agricultural land.

(2) This section applies only to areas where erosion exists and vegetation is not present, as demonstrated by photographs submitted with the notification form.

(3) This section does not apply to riprap on any river as defined by 38 M.R.S.A. Section 436-A(11), the Mandatory Shoreland Zoning Act (information is available at the Town Office).

(43) This section does not apply to areas within or adjacent to a coastal wetland containing soft bottom (mudflat) sediments or salt marsh vegetation.

(54) This section does not apply to areas within any portion of a coastal sand dune system even if portions of these systems extend into the coastal wetland.

(65) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

Amend Section 8(A) NOTES, "Shoreline stabilization", as follows:

(2) A permit ~~may~~ will be required from the US Army Corps of Engineers for ~~a~~ riprap projects that ~~exceeds 500 feet in length and the fill below the normal high water line exceeds 1 cubic yard per linear foot of riprap~~include fill below the ordinary high water line of fresh waters or below the spring high tide line of tidal waters.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 8(B), "Shoreline stabilization", as follows:

B. Submissions

(1) The applicant is required to submit photographs of the entire shoreline area where this activity is proposed.

(2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

(3) Design plans for riprap on streams and brooks when required pursuant to paragraph C(12) of this section.

Amend Section 8(C)(12), "Shoreline stabilization", as follows:

(12) Design of riprap on ~~river,~~ stream or brook banks must be approved by either a Maine Registered Professional Engineer, the United States Natural Resources Conservation Service, or the local Soil and Water Conservation District. Evidence of this approval or plans stamped by a professional engineer must be submitted along with the

Notification Form. With prior written agreement, the DEP may waive this standard for minor riprap activities on small streams.

Amend Section 8(D)(2), "Shoreline stabilization", as follows:

(2) Riprap. Heavy, irregular-shaped rocks that are fit into place, ~~usually~~ without mortar, on a slope.

Amend Section 9(A) NOTES, "Crossings (utility lines, pipes and cables)", as follows:

(4) A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving open trench excavation in a waterbody or where the impact (direct and indirect) to wetlands exceeds 4,300 square feet;

(b) Any activity in coastal waterways; ~~or~~

(c) Any activity within a river, stream or brook between October 2 and July 14; or~~.~~

(d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 9(D)(4), "Crossings (utility lines, pipes and cables)", as follows:

(4) Riprap. Heavy, irregular-shaped rocks that are fit into place, ~~usually~~ without mortar, on a slope.

Amend Section 10(A) NOTES, "Stream crossings (bridges, culverts and fords)", as follows:

(3) A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving impacts (direct and secondary) to freshwater wetlands; or

(b) An activity within a river, stream or brook between October 2 and July 14.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 10(D)(6), "Stream crossings (bridges, culverts and fords)", as follows:

(6) Riprap. Heavy, irregular-shaped rocks that are fit into place, ~~usually~~ without mortar, on a slope.

Amend Section 12(A) NOTE, "Restoration of natural areas", as follows:

(2) A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving impacts (direct and secondary) to freshwater wetlands;

(b) Any activity within a coastal wetland;

(c) Any activity within an open water area; ~~or~~

(d) Any activity within a river, stream or brook between October 2 and July 14~~.~~; or

(e) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 13(A) NOTE, "Habitat creation or enhancement and water quality improvement projects", as follows:

NOTES:

(1) Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

(2) A permit will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving impacts (direct and secondary) to freshwater wetlands;

(b) Any activity within a coastal wetland;

(c) Any activity within an open water area;

(d) Any activity within a river, stream or brook between October 2 and July 14; or

(e) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the PBR notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, 675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 13(D)(2), "Habitat creation or enhancement and water quality improvement projects", as follows:

(2) Public natural resources agency. The Maine Department of Inland Fisheries and Wildlife, the Maine Department of Marine Resources, the Maine DEP, the Atlantic Sea Run Salmon Commission, the Maine Department of Conservation, the United States Fish and Wildlife Service, the United States Natural Resources Conservation Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, National Marine Fisheries Service, National Park Service, National Oceanic and Atmospheric Administration, and County Soil and Water Conservation Districts.

Repeal Section 14 "Piers, wharves, haulouts and pilings":

14. Piers, wharves, pilings and haulouts

A. Applicability

(1) This section applies to the construction or expansion of a pile supported pier or wharf, the installation of pilings, or the construction of a haulout in a coastal wetland. This section also applies to the construction of roads, walkways, or other access ways to the pier, wharf or haulout.

(2) This section applies to the construction of a structure for a water dependent use (e.g. bait sheds) on a pile supported pier or wharf that meets the criteria of subsection B below.

(3) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of permits issued under the Site Location of Development Law, 38 M.R.S.A. Sections 481 to 490, the Storm Water Management Law, 38 M.R.S.A. Section 420-D, or the Natural Resources Protection Act, 38 M.R.S.A. Sections 480-A to 480-Z.

(4) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

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(5) This section does not apply to an activity that is located in an area containing significant wildlife habitat as identified by the Department of Inland Fisheries and Wildlife.

B. Submissions

(1) The applicant is required to submit photographs of the area in which this activity is proposed and a project design plan for the proposed activity if it is a pier, wharf or haulout.

(2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

(3) The applicant must submit a letter of permission by the abutting or other controlling property owner when new structures constructed under this section do not meet the setback requirements of Standard #9 below.

C. Standards

(1) When the PBR notification is submitted to the DEP, the applicant shall submit a copy of the project design plan along with a copy of the notification form to the Department of Conservation, Bureau of Parks and Lands (State House Station #22 Augusta, Maine 04333), to determine whether a submerged lands lease or easement is necessary. Work on the activity may not begin until a lease or easement is obtained or the Bureau of Parks and Lands has provided notification that one is not necessary.

NOTE: Processing of a request for a lease or easement may require several weeks of review.

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(2) The applicant shall submit a copy of the project design plan along with a copy of the notification form to the United States Army Corps of Engineers (Maine Project Office, RR 2, Box 1855, Manchester, Maine 04351) at the time the notification form is submitted to the DEP. The Corps will contact the applicant if additional information is required for his or her application process. Construction may not begin until a permit from the Corps is obtained.

(3) A pier, wharf or haulout may not be located over salt marsh or other emergent marsh vegetation that is more than 10 feet in width, measured perpendicularly to shore. Any portion of a pier or wharf that is over salt marsh or other emergent marsh vegetation must be elevated to a minimum height equal to the width of the pier (e.g. the bottom of the decking for a six foot wide pier must be at least 6 feet above the underlying substrate.)

(4) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the proposed resource:

(a) Staked hay bales or silt fence must be properly installed between the area of soil disturbance and the resource before the activity begins;

(b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;

(c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;

(d) All disturbed soils must be permanently stabilized; and

(e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991. This handbook and other references on silt fence and hay bale installation and site stabilization are available from the DEP.

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(5) A commercial or public pier or wharf may not exceed 12 feet in width as measured parallel to the shoreline, and must be limited to the minimum length necessary to provide access to boats intended to use the facility.

(6) A non-commercial, private pier may not have a width of over 6 feet as measured parallel to the shoreline and may not extend beyond the mean low water line. A

temporary ramp and float may be attached to the pier or wharf and may extend below the mean low water line.

(7) Only one pier or wharf and only one haulout are allowed on any single lot with shore frontage or area under common ownership with shore frontage.

(8) A structure may not extend across more than 25 percent of any channel at mean low water. A structures may not extend into a designated federal channel.

(9) New piers, wharves and pilings must be set back at least 25 feet from property lines and 50 feet from other structures that are fixed in place below the normal high water line and not owned or controlled by the applicant unless a letter of permission is provided from the abutting owner or other controlling property owner.

(10) A haulout must be pinned to the underlying ledge or must be supported on piles.

(11) A haulout may not extend beyond the low water line.

(12) A haulout must be constructed of timbers no more than 8 inches in width. Cross braces may not be set closer than 16 inches on center. Timbers may not be closer than 4 feet apart. The total width of the haulout may not exceed 12 feet. No fill may be added to the wetland as part of the haulout construction.

(13) Any access way to a pier, wharf or haulout must have a stabilized surface that will not erode. In addition, any new access way must be less than 10 feet in width and must be constructed entirely on upland areas.

(14) The use of untreated lumber is preferred. Lumber pressure treated with chromated copper arsenate (CCA) may be used, provided it is cured on dry land in such a manner as to expose all surfaces to the air for a period of at least 21 days prior to construction. Wood treated with creosote or pentachlorophenol may not be used where it will contact water.

(15) Uncured concrete may not be placed directly into the water. Concrete must be pre-cast and cured at least three weeks before placing in the water or, where necessary, must be placed in forms and cured at least one week before the forms are removed. No washing of tools, forms, etc. may occur in or adjacent to the waterbody or wetland.

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

(1) Emergent marsh vegetation. Plants that are erect, rooted and herbaceous, and that may be temporarily to permanently flooded at the base, but do not tolerate prolonged inundation of the entire plant; e.g. cattails, saltmarsh cordgrass.

(2) Haulout. A structure made of wood and used as a ramp to aid in the removal of boats or floating docks from the water; also known as a skidway.

(3) Permanent structure. Permanent structure means any structure constructed or erected with a fixed location, or attached to a structure with a fixed location in, on or in the

~~ground within a fragile mountain area, or having a fixed location, in on or over the water for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings (38 M.R.S.A. Section 480-B(10)).~~

~~(4) Project design plan. A detailed plan of the proposed activity indicating all dimensions (width, height, length) relative to the mean low water mark including any appurtenant structures that may be seasonal in nature.~~

~~(5) Water dependent use. A use which cannot occur without access to surface water. Examples of uses that are water dependent include, but are not limited to, piers, boat ramps, marine railways, lobster pounds marinas and peat mining. Examples of uses which are not water dependent include, but are not limited to, boat storage, residential dwellings, hotels, motels, restaurants, parking lots, retail facilities and offices.~~

Amend Section 15(A), "Public boat ramps", as follows:

(1) This section applies to the construction of a new, or the replacement of an existing, public boat ramp or carry-in launch area, including associated parking and accessways, in or adjacent to a protected natural resource by a public natural resource agency, Maine Department of Transportation, municipality, or owners of a federally licensed hydropower project within the resource affected by the hydropower project. This section does not apply if a portion of the ramp or related facilities is located in, on or over emergent marsh vegetation or intertidal mudflat.

(2) This section applies to the construction of up to 2 launch lanes at a facility provided no more than 2 lanes exist or will exist at the completion of the activity.

(3) This section does not apply to a new boat ramp on a lake infested with aquatic invasive plants, as defined in 38 M.R.S.A. Section 410-N. The Department of Environmental Protection identifies and maintains a list of these infested lakes.

NOTE: A permit ~~may~~ will be required from the US Army Corps of Engineers for the following types of projects:

(a) Any activity involving open trench excavation in a waterbody;

(b) Any activity in coastal waterways; ~~or~~

(c) Any activity within a river, stream or brook between October 2 and July 14~~.~~; or

(d) Any activity involving work in waterways designated as Essential Fish Habitat for Atlantic salmon including all aquatic habitats in the watersheds of the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration: St. Croix, Boyden, Dennys, Hobart Stream, Aroostook, East Machias, Machias, Pleasant, Narraguagus, Tunk

Stream, Patten Stream, Orland, Penobscot, Passagassawaukeag, Union, Ducktrap, Sheepscot, Kennebec, Androscoggin, Presumpscot, and Saco River.

A copy of the permit by rule notification form and original photographs, not photocopies, should be submitted to the Corps of Engineers for these activities (US Army Corps of Engineers, ~~RR 2 Box 1855~~675 Western Avenue, Suite #3, Manchester, ME 04351. Tel. (207) 623-8367).

Amend Section 15 (B)(1), "Public boat ramps", as follows:

(1) The applicant~~s~~ is required to submit photographs of the area in which this activity is proposed.

Amend Section 16, "Activities in coastal sand dunes", as follows:

A. Applicability

(1) This section applies to the following activities in coastal sand dune systems:

(a) Replacement of an existing seawall;

(b) Dune restoration or construction;

(c) Beach nourishment;

(d) Construction of a new structure or new development, other than a building or closed fence, ~~walkway, driveway, or a deck~~ in a back dune area ~~that are classified as A, B or C flood hazard zones~~;

(e) New buildings~~development~~ or an addition to an existing building~~development~~ in a back dune~~, non-flood (C zone) area of coastal sand dune system~~ that is not an erosion hazard area~~expected to be damaged due to shoreline change within 100 years based on historic and projected trends~~; and

(f) Construction of closed~~open~~ fences in a back dune C zone.~~; and~~

PBR applications are reviewed on a case by case basis to determine the concern for damage due to shoreline change. In an area where concern for damage due to shoreline change is identified, the applicant is required to file for a Natural Resources Protection Act Permit, and is encouraged to contact the DEP for a pre-application meeting.

(2) This section does not apply to the construction of a~~n addition to an existing~~ structure in ~~an A or B flood hazard zone or to any structures in~~ a V flood hazard zone~~s~~.

(3) This section does not apply to an activity that will not conform to the local shoreland zoning ordinance.

NOTE: Contact the local Code Enforcement Officer for information on local shoreland zoning requirements.

B. Submissions

(1) The applicant is required to submit photographs of the area in which the activity is proposed.

(2) Photographs showing the finished activity must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

(3) The following information must also be submitted with the notification form:

(a) A site plan showing the project location and square footage of the property, buildings and development, ~~(~~both existing and proposed (see definitions of Building, Footprint and Development in Section D);

~~(b) A copy of the Flood Insurance Rate Map (FIRM map) for the lot, with the project site accurately located on the map;~~

(b~~c~~)A copy of the Beach and Dune Geology Aerial Photo, dated 2001, which contains the project site and has the project site clearly identified on the photo~~coastal sand dune map of the area with the lot and any building site accurately located on the map~~;

NOTE: Photos~~Maps~~ are available for review at the town offices of most coastal communities and at DEP regional offices.~~,~~ The photos~~and~~ are also available for purchase from the Maine Geological Survey, 22 State House Station~~ 22~~, Augusta, ME 04333

(c~~d~~)For seawall replacement only, an accurate plan drawn to scale by a licensed surveyor, coastal geologist or professional engineer showing the location of the existing and proposed wall and the elevation of the wall(s) referenced to ~~National Geodetic Vertical Datum (NGVD).~~a nearby permanent and reproducible elevation point, such as a described point on a building or other structure. The plan must be signed and dated by the person responsible for preparing the drawing, and

(d~~e~~)If moving sand in an area seaward of the frontal dune between April 1 and September 1, a copy of the written approval to proceed from the Department of Inland Fisheries and Wildlife.

C. Standards

~~(1) Native vegetation must be retained on the lot. No fill may be placed on the site other than that required for the approved dune restoration or construction, beach nourishment, foundation backfill and driveway or walkway construction. Foundation backfill and sand dune restoration and construction must utilize sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics. No sand may be moved seaward of the frontal dune between April 1 and September 1, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.~~

(1~~2~~) No more than 40% of the lot may be covered by development including, but not limited to, buildings~~structures~~, driveways, walkways, parking areas, lawn or landscaped area~~waste disposal systems~~, and~~including~~ land area previously developed; nor may the total area to be covered by the footprint of buildings exceed 20% of the lot, including existing buildings. Land area within the V-zone may not be included as part of a lot for the purposes of this section.

(2~~3~~) Where development that is existing or did exist within one year of application exceeds 40% of the total lot area, the percentage of developed area may not be increased.

(3~~4~~) Where the footprint of buildings that are existing or did exist within one year of application exceed 20% of the total lot area, the percentage of area covered by buildings may not be increased.

~~(5) No additional land may be covered by development or buildings as a result of lot subdivisions created after January 4, 1988.~~

(4~~6~~) An activity occurring on land adjacent to a coastal wetland, freshwater wetland containing over 20,000 square feet of open water or emergent marsh vegetation, great pond, river, stream or brook must meet the erosion control and setback requirements of Section 2, "Activities adjacent to protected natural resources".

(5~~7~~) Building or building additions may not cause a total structure to be greater than 35 feet in height or ~~cover a ground area~~have a footprint greater than 2500 square feet.

~~(8) A new structure or an addition to an existing structure must be constructed to withstand wind from a storm having a 50-year recurrence interval as provided in standards published by the Federal Emergency Management Agency in the Coastal Construction Manual, Chapter 4 and Appendices A and B, dated February 1, 1986.~~

NOTE: The Department recommends that projects be constructed according to the Coastal Construction Manual published by the Federal Emergency Management Agency, which describes the best practices for residential construction in coastal areas.

(6~~9~~) A building may not be constructed so that any part of the building extends seaward of a line drawn between the seaward most point of buildings on adjacent properties if the construction would significantly obstruct the view from an adjacent building.

(7~~10~~) During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of ~~natural~~ dune vegetation that are disturbed must be restored as quickly as possible. ~~Natural d~~Dune vegetation includes American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

(8) No fill may be placed on the project site other than that required for an approved dune restoration project or new construction. Foundation backfill and sand dune restoration and construction must utilize sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.

(9) No sand may be moved seaward of the frontal dune between April 1 and September 1, unless written approval from the Department of Inland Fisheries and Wildlife has been obtained.

(10~~1~~) An activity involving dune restoration or dune construction must be performed between March 1 and April 1 or October 1 and November 15. ~~Beach~~Dune grass must be planted immediately after construction. ~~Beach~~ Dune grass must be planted with 3 culms per hole. The holes must be spaced 18 inches apart. The planted ~~beach~~ dune grass must be protected from pedestrian traffic until the ~~beach~~ dune grass is well established. The density of the growing stand of ~~beach~~ dune grass must be at least 40 plants per 100 square feet.

(11~~2~~) Dune restoration/construction and beach nourishment projects must use sand that has textural and color characteristics consistent with the natural sand's textural and color characteristics.

(12~~3~~) A dune restoration or dune construction activity must minimize damage to existing dune vegetation and must follow the configuration and alignment of adjacent dunes as closely as possible. No sand or other materials may be placed below the normal high tide line.

(13~~4~~) The replacement of a seawall may not increase the height, length or thickness dimensions of a seawall beyond that which legally existed within 24 months of submission of the notification form. The replaced seawall may not be significantly different in construction from the one that previously existed.

(14~~5~~) A~~ny~~ private walkway must be 4 feet or less in width. A~~ny~~ public walkway must be 10 feet or less in width. Walkways must allow for sand movement and may not have a significant impact on vegetation outside of the footprint of the walkway. No portion of the walkway may be located in the V flood hazard zone.

~~(16) Any fence constructed in A, B, or V flood hazard zones, or any fence constructed on or seaward of the frontal dune must be an open fence that allows water, wind or sand to move through it easily. Fences may not be placed on the beach face unless the fence is used to keep pedestrian traffic off of dune vegetation or away from shore bird nesting or breeding areas.~~

D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise:

~~(1) A-zone. That land area of special flood hazard subject to a one percent or greater chance of flooding in any given year.~~

~~NOTE: These areas will be designated as Zones A, Al-30, or AO on a community's Flood Insurance Rate Map, and the depth of flooding will usually be shown on the map. In cases where these maps are not available, no longer apply to a specific site because of significant shoreline changes, or show unnumbered A-zones, the base flood elevation must be determined using the best available data. The base flood, also known as the 100 year flood, is the flood with a one percent chance of occurring in any given year. Flood elevations must be given relative to NGVD, which is a standard elevation (0.00 feet) from which land measurements are derived. Procedures for determining flood elevations should conform with the procedures established by the Federal Emergency Management Agency (FEMA) in developing the Flood Insurance Rate Maps. Computer analysis is not required.~~

~~(2) American beach grass. A grass species native to sand dune systems with the scientific name *Ammophila breviligulata*.~~

~~(3) B-zone. Areas between the special flood hazard areas (A-zones and V-zones) and the limits of the 500 year flood. This zone also includes areas of 100 year shallow flooding where water depths are less than one foot.~~

(14) Back dunes. Back dunes consist of sand dunes and eolian sand flats that lie landward of the frontal dune or a low energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.

~~NOTE: In locations of extreme dune erosion where the frontal dune is completely eroded, back dunes may become frontal dunes.~~

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(25) Beach ~~face~~. ~~The sloping portion of a beach that is below the high tide limit, and is usually exposed to wave action.~~ The zone of unconsolidated sand or gravel that extends landward from the mean low water line to the seaward toe of a dune. The definition of beach includes the beach face and berm.

(36) Beach nourishment. Artificially adding sand to the beach face.

(47) Berm. The flat or gently sloping area between the high tide limit and frontal dune. A berm is formed by deposition of sand ~~that has been~~ transported to shore by tides, waves ~~and along shore by waves~~, wind and ~~long shore~~ currents.

(5) Building. A structure designed for habitation, shelter, storage, or as a gathering place that has a roof. For the purposes of this rule, the foundation is considered to be a part of the building. A porch with a roof, attached to the exterior walls of a building, is considered part of the building.

(68) C-zone. Areas of minimal flooding above the level of the 100 year flood as mapped by the Federal Emergency Management Agency.

(7) Closed fence. A fence that effectively blocks the movement of wind, water, or sand, such as a stockade fence or snow fence.

(8~~9~~) Development. The alteration of property for human-related use including, but not limited to, buildings, decks, driveways, parking areas~~, wastewater disposal systems~~, lawns, landscaped areas, and areas of~~other~~ non-native vegetation, and any other appurtenant facilities, but excluding temporary structures~~ and open decks exempted by the Coastal Sand Dune Rules (06-096 CMR 355)~~.

(9) Dune vegetation. Dune plant species typically adapted to Maine's coastal sand dune systems including, but not limited to, American beach grass, rugosa rose, bayberry, beach pea, beach heather and pitch pine.

(10) Erosion hazard area. Any portion of the coastal sand dune system that can reasonably be expected to become part of a coastal wetland in the next 100 years due to cumulative and collective changes in the shoreline from:

(a) Historical long-term erosion;

(b) Short-term erosion resulting from a 100-year storm; or

(c) Flooding in a 100-year storm after a two-foot rise in sea level.

~~(10) FEMA. The Federal Emergency Management Agency of the United States Government. This agency administers the National Flood Insurance Program and the Flood Insurance Rate Maps.~~

(11) Footprint. The outline that would be created on the ground by extending the exterior walls of the building to the ground surface.

(12) Foundation. The portion of a structure that transmits the loads of the structure to the ground, including but not limited to: spread footings, foundation walls, posts, piers, piles, beams, girders, structural slabs, bracings, and associated connectors.

(13~~1~~) Frontal dune. The frontal dune is the area consisting of the most seaward ridge of sand and gravel and includes former frontal dune areas modified by development. Where the dune has been altered from a natural condition, the dune position may be inferred from the present beach profile, dune positions along the shore, and regional trends in dune width. The frontal dune may or may not be vegetated with ~~natural flora~~dune vegetation and may consist in part or in whole~~,~~ of artificial fill. In areas where smaller ridges of sand are forming in front of an established dune ridge, the frontal dune may include more than one ridge.

(14~~2~~) Land adjacent to a protected natural resource. Any land area within 75 feet, measured horizontally, of the normal high water line of a great pond, river, stream or brook or the upland edge of a coastal wetland or freshwater wetland.

(15~~3~~) Lot. Also referred to as a lot of record, all contiguous areas under a single present ownership as indicated by a deed and recorded in the registry of deeds constituting a piece of land measured and marked by metes and bounds descriptions or by some

other approved surveying technique.~~A piece of land measured and marked out by metes and bounds or by some other approved surveying technique.~~

~~(14) National geodetic vertical datum (NGVD). The base (0.00) elevation point from which land measurements are derived. This elevation was established in 1929 and was formerly called "sea level datum of 1929" or "mean sea level."~~

(16~~5~~) Permanent s~~S~~tructure (also referred to as a "structure" in this section). Any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year. Permanent structures include, but are not limited to: causeways, piers, docks, concrete slabs, piles, marinas, retaining walls, buildings, swimming pools, fences, seawalls, roads, driveways, parking areas, and walkways. Natural features, such as frontal dunes, are not considered permanent structures. For the purposes of this section, open decks and storage sheds that comply with the criteria outlined below are not considered to be structures.

(a) Open decks that: do not exceed a total of 200 square feet, including any existing decks on the property, are not located in a V-Zone, are supported by posts, and are elevated at least 3 feet above existing grade to allow unobstructed flow of sand, wind and water.

(b) One storage shed per lot that does not exceed 100 square feet, provided that it is not located in a V-Zone and that it is not converted to a habitable structure.

~~Something constructed, including, but not limited to, buildings, swimming pools and fences, but not including seawalls, driveways, parking areas and natural features, such as frontal dunes.~~

(17) Seawall. Vertical wall, or other sloped barrier that separates land from water areas, commonly constructed out of rocks, wood, concrete or other similar materials, generally built for the purpose of protecting structures or property from shoreline erosion caused by wave or current action. A seawall is presumed to be a permanent structure.

(18~~6~~) V-zone. That land area of special flood hazard subject to a one- percent or greater chance of flooding in any given year, and subject to additional hazard from high velocity water due to wave action. Wave heights or wave run-up depths are equal to or greater than 3 feet in V-Zones.~~Areas below the 100-year flood elevation that experience wave action during a 100-year flood condition as mapped by the Federal Emergency Management Agency.~~